

§ 143-215.120. Criteria for permit approval; time frame; permit conditions; other approvals required.

(a) Permit Approval. – The Department shall approve an application for a permit for a proposed wind energy facility or proposed wind energy facility expansion unless the Department finds any one or more of the following:

- (1) Construction or operation of the proposed wind energy facility or proposed wind energy facility expansion would be inconsistent with or violate rules adopted by the Department or any other provision of law.
- (2) Construction or operation of the proposed wind energy facility or proposed wind energy facility expansion would encroach upon or would otherwise have a significant adverse impact on the mission, training, or operations of any major military installation or branch of military in North Carolina and result in a detriment to continued military presence in the State. In its evaluation, the Department may consider whether the proposed wind energy facility or proposed wind energy facility expansion would cause interference with air navigation routes, air traffic control areas, military training routes, or radar based on information submitted by the applicant pursuant to subdivisions (5) and (6) of subsection (a) of G.S. 143-215.119, and any information received by the Department pursuant to subdivision (2) of subsection (d) of G.S. 143-215.119.
- (3) Construction or operation of the proposed wind energy facility or proposed wind energy facility expansion would result in significant adverse impacts to ecological systems, natural resources, cultural sites, recreation areas, or historic sites of more than local significance; including national or State parks or forests, wilderness areas, historic sites, recreation areas, segments of the natural and scenic rivers system, wildlife refuges, preserves and management areas, areas that provide habitat for threatened or endangered species, primary nursery areas designated by the Marine Fisheries Commission and the Wildlife Resources Commission, and critical fisheries habitat identified pursuant to the Coastal Habitat Protection Plan.
- (4) Construction or operation of the proposed wind energy facility or proposed wind energy facility expansion would have a significant adverse impact on fish or wildlife.
- (5) Construction or operation of the proposed wind energy facility or proposed wind energy facility expansion would have a significant adverse impact on views from any State or national park, wilderness area, significant natural heritage area as compiled by the North Carolina Natural Heritage Program, or other public lands or private conservation lands designated or dedicated due to their high recreational values.
- (6) Construction or operation of the proposed wind energy facility or proposed wind energy facility expansion would obstruct major navigation channels or create a significant obstacle to navigation in coastal waters, as determined by the United States Army Corps of Engineers and the United States Coast Guard.
- (7) A permit for a proposed wind energy facility or proposed wind energy facility expansion would be denied under any other criteria set out in G.S. 113A-120.

- (8) Construction of the proposed wind energy facility or proposed wind energy facility expansion would be prohibited under Article 14 of Chapter 113A of the General Statutes, the Mountain Ridge Protection Act of 1983.
- (9) The applicant is not in compliance with all applicable federal, State, or local permit requirements, licenses, or approvals, including local zoning requirements.

(b) Permit Decision. – The Department shall make a final decision on a permit application within 90 days following receipt of a completed application, except that the Department shall not be required to make a final decision until the Department has received a written "Determination of No Hazard to Air Navigation" issued by the Federal Aviation Administration pursuant to Subpart D of Part 77 of Title 14 of the Code of Federal Regulations (January 1, 2012 edition). If the Department requests additional information following the receipt of a completed application, the Department shall make a final decision on a permit application within 30 days of receipt of the requested information. If the Department determines that an application for a wind energy facility or a wind energy facility expansion fails to meet the requirements for a permit under this section, the Department shall deny the application, and the application shall be returned to the applicant accompanied by a written statement of the reasons for the denial and any modifications to the permit application that would make the application acceptable. If the Department fails to act within the time period set forth in this subsection, the applicant may treat the failure to act as a denial of the permit and may challenge the denial as provided under Chapter 150B of the General Statutes.

(c) Permit Conditions. – The Department (i) may include as a condition of a permit for a proposed wind energy facility or proposed wind energy facility expansion a requirement that the permit holder mitigate any adverse impacts and (ii) shall include as a condition of a permit for a proposed wind energy facility or proposed wind energy facility expansion a requirement that the permit holder obtain a written "Determination of No Hazard to Air Navigation" issued by the Federal Aviation Administration pursuant to Subpart D of Part 77 of Title 14 of the Code of Federal Regulations (January 1, 2012 edition) for the facility. No permit for a wind energy facility or wind energy facility expansion shall become effective until the Department has received and reviewed the "Determination of No Hazard to Air Navigation" issued by the Federal Aviation Administration for the facility. If the specific location of a turbine authorized to be constructed pursuant to a "Determination of No Hazard to Air Navigation" or the configuration of the wind energy facility varies from the information submitted by the applicant upon which the Department has made its permit decision, the Department may reevaluate the permit application and require the applicant to submit any additional information the Department deems necessary to approve or deny a permit for the facility as reconfigured.

(d) Other Approvals Required. – The issuance of a permit under this section shall not obviate the need for the applicant to obtain any and all other applicable local, State, or federal permits, licenses, or approvals. Furthermore, nothing in this Article shall be interpreted to limit, as applicable, (i) the application of Article 7 of Chapter 113A of the General Statutes to facilities permitted under this section, including the permitting requirements of G.S. 113A-118, (ii) the ability of a city or county to plan for and regulate the siting of a wind energy facility in accordance with land-use regulations authorized under Chapter 160A and Chapter 153A of the General Statutes, or (iii) the applicable requirements of Chapter 62 of the General Statutes. (2013-51, s. 1.)